Approved For Release 2007/05/21 : CIA-RDP85-00003R000300060002-3

tion in the abstention provision required because of the exercise by the bankruptcy court of the entire jurisdiction of cases under title 11 leaving nothing from which the district court can abstain.

Section 311 of the Senate amendment adopts the position taken in the Senate bill.

Section 408 of the Senate amendment tracks the amendment made by Section 39 to make clear in the Social Security Act itself the bankruptcy policy that the alimony and child support obligation even though assigned to a state welfare agency is not discharged in the bankruptcy case.

Section 409 of the Senate amendment adds a provision not included in the Senate Bill on House amendment to make clear that bankruptcy fraud under the RICO Statute is a predicate crime regardless of whether it occurred in connection with a case under the former Bankruptcy Act of 1898 or the new Bankruptcy Code.

Section 601 of the Senate amendment adopts the position taken in the House amendment with the exception of the elimination of an erroneously included provision.

● Mr. DOLE. Mr. President, I raise to support wholeheartedly S. 658, a bill to correct technical errors, clarify, and make minor substantive changes to Public Law 95–598, the Bankruptcy Reform Act of 1978.

On November 6, 1978, the Bankruptcy Reform Act of 1978, a comprehensive revision of the Federal bankruptcy laws, was signed into effect. Since that time, judges, scholars, and bankruptcy practitioners have reviewed its provisions and suggested to the Senate Judiciary Committee numerous technical amendments and minor substantive changes. On September 7, 1979, the Senate passed S. 658 which embodied many of those recommendations. A little over a year later, the House passed its version, H.R. 5447. For the past 2 months, the respective would be Senate and House conferees and their staffs have attempted vigorously and thoroughly to work out differences before Congress adjourns sine die.

S. 658, in its present form before the Senate, represents the best legislative effort possible, at this time. Further substantive changes without additional hearings would have been inappropriate. Hopefully, such hearings will be held early in the next Congress.

I would like to commend Senator DECONCINI and his staff for their diligence, perseverance, and accommodation with the other Senate and House Members involved from introduction of S. 658 over 18 months ago to hopefully its final passage.

The Senator from Kansas therefore urges his colleagues to pass by unanimous consent S. 658, technical amendments to the Bankruptcy Reform Act of 1978.●

The PRESIDING OFFICER. Without objection, the motion is agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PAYMENT AND SETTLEMENT OF CLAIMS OF U.S. CIVILIAN AND MILITARY PERSONNEL

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CULVER, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 6086.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House disagree to the amendments of the Senate to the bill (H.R. 6086) entitled "An Act to proivde for the settlement and payment of claims of United States civilian and military personnel against the United States for losses resulting from acts of violence directed against the United States Government or its representatives in a foreign country or from an authorized evacuation of personnel from a foreign country."

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate recede from the amendments of the Senate.

The PRESIDING OFFICER. Without objection, the motion is agreed to.

AUTHORIZATION TO INDEFINITELY POSTPONE CALENDAR ORDERS NOS. 802 AND 1052

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Calendar Order No. 802, a bill to amend the Securities Exchange Act of 1934 to authorize appropriations for the Securities and Exchange Commission for fiscal years 1981 through 1983, and Calendar Order No. 1052, a bill to amend Federal securities laws to facilitate the mobilization of capital for new small- and medium-sized companies by encouraging venture capital activities and promoting public investment, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, not to extend beyond 15 minutes, and that Senators may speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

KRISTALLNACHT

Mr. PROXMIRE. Mr. President, one of the most shameful and deplorable chapters of our world history began 42 years ago this month.

November 9, 1938, known in German as Kristallnacht, or the Night of the Broken Glass, is historically regarded as the beginning of the holocaust, the Nazis' organized persecution of the Jews in Europe. That night, thousands of Jewish synagogues, businesses, and homes were systematically burned, destroyed, rampaged and looted. Many Jews were killed, and scores were arrested and jailed. Kristallnacht foreshadowed the terror and horror which prevailed in Europe until the end of the war.

Until their defeat in 1945, the Germans not only applied torture and cruelty against the Jews, but they also attempted to eliminate the Jewish population fom the face of the Earth.

Such odious and inhumane behavior can never be allowed to recur.

Our country was a sharp critic and enemy of the Nazi regime, and it is not a perpetrator of human rights violations. Yet our reserve to prevent the recurrence of another holocaust will not be considered fully credible until the United States ratifies the Genocide Convention.

This treaty denounces the intent to eliminate a religious, ethnic, racial, or national group of peoples.

Yet, although our country has had over 30 years to ratify the treaty, we have not yet done so. We are the only major industrialized nation to have not ratified the Genocide Convention.

The holocaust could happen again. World War II ended only 35 short years ago. The chances of recurrence of the extermination of masses of people will be greatly reduced, however, if all nations unite to express global contempt for this crime.

We must join the other nations of the world in a universal declaration, resolving that the repugnant horrors unleashed after Kristallnacht must never be repeated.

The United States cannot continue to give even tacit approval to the extermination of human beings.

I urge my colleagues to move immediately to ratify the Genocide Convention.

QUORUM CALL

The PRESIDING OFFICER. Is there further morning business?

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS FOR 15 MINUTES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 15 minutes.

There being no objection, the Senate, at 12:35 p.m., recessed until 12:50 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. PRYOR).

RECESS FOR 30 MINUTES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 30 minutes.

There being no objection, the Senate, at 12:50:27 p.m., recessed until 1:20:27 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. LEAHY).

Approved For Release 2007/05/21 : CIA-RDP85-00003R000300060002-3

Approved For Release 2007/05/21 : CIA-RDP85-00003R000300060002-3

when, for example, the trustee must operate the business.

Section 63 of the Senate amendment adopts the position taken in the House amendment with the addition of the clarification that a redemption under Section 722 contemplates a cash lump sum payment unless that affected creditor agrees otherwise as might occur in the context of a reaffirmation.

Section 67 of the Senate amendment adopts the position taken in the House amendment with the addition of the alternative of allowing interest to be paid under Section 726(a)(5) at the higher of the legal or contract rate, to prevent a liquidation proceeding from being a vehicle for a solvent debtor to escape the obligation to pay a contract rate of interest.

Section 84 of the Senate amendment adopts the position taken in the House amendment with the addition of provisions for notices and meetings of creditors in a proceeding to adjust the debts of a municipality.

Section 107 of the Senate amendment adopts the position taken in the House amendment with the addition of several positions taken in the Senate bill most notably the provision found a 180(g) of the Senate bill that requires one actual voting class to accept the plan. The Senate receded to the House on its provision to amend 1103(b) of the code to allow the secretary to a creditor committee to also be employed separately by a creditor in the case. Although the Senate receded, the issue of whether a creditor committee should have the freedom of choice to determine its employees, including the committee attorney and accountant remains. The issue will have to be considered again in the near future after further experience under the Code and an evaluation of the impact of this section on the quality of professional assistance available to creditor committees particularly in rural areas with few bankruptcy practitioners.

Section 111 of the Senate amendment adopts the position taken in the House amendment with the addition of a provision from the Senate bill.

Chapter 13 is the Chapter for adjustment of debts for individuals with regular income. In proceedings under that Chapter the debtor seeks protection of the bankruptcy court but with the intention of working out a reasonable payment schedule with his creditors as opposed to liquidation or 'straight' bankruptcy. In practice under the code it has been the most misused and abused portion of the Bankruptcy Code. Designed for debtors who wanted to pay their debts but who suffered from severe cash flow problems, the Chapter has become a haven for debtors with far less noble goals who are seeking a discharge of their unsecured indebtedness after minimal or no payments to creditors. That situation should not be allowed to continue and to tint the efforts of those debtors who are striving to meet their financial duties and are making reasonable repayments through Chapter 13 plans. With that in mind, several amendments designed to thwart the debtor who is trying to take advantage of the liberal provisions of Chapter 13 have been adopted, but which will still leave Chapter 13 an attractive alternative to the straight bankruptcy for the debtor who is sincerely trying to repay his obligations.

Section 121(c) amends 1301 to grant a creditor automatic relief from the co-debtor stay to the extent that the confirmed plan will not pay a creditor's claim in full.

Section 122. The regulations to be promulgated under Section 1302(b)(3) might contemplate the use of old Chapter XIII money for work done in new chapter 13 cases although this is not encouraged.

Section 128(b) amends Section 1325(a)(4) of the Code by requiring a "bona fide effort" on the part of the debtor to repay his unsecured debts under the Chapter 13 plan. This test is in addition to the requirement that the unsecured creditors must be paid at least what they would be entitled to receive if the debtor was in a Chapter 7 liquidation proceedings. The Senate bill provides for a 'best effort' test while the House provided for a 'good faith effort'. The 'bona fide' standard envisions not only a sincere good faith effort by the debtor, but also one that proposes payments to the creditors that represent a significant percentage, if not all, of the debts owed.

The "bona fide effort" requirement is responsive to the widespread concern among creditors and judges alike that the provisions of Chapter 13 as enacted inadvertently permitted plans to be confirmed that proposed little or no payments to unsecured creditors. This is contrary to the historical spirit and intent of Chapter 13 which was to afford the debtor the protection of the bankruptcy court while the debtor worked out a plan to repay his creditors over a period of years out of his future earnings. Thus, Chapter 13 is a remedy for the individual with severe cash-flow problems while Chapter 7 would be available for the debtor who simply had no present or foreseeable prospects of paying his debts at all.

Under the new law, too often instead of meaningful payments to unsecured creditors, the norm has become "zero" or nominal payment plans in many jurisdictions. In other areas, judges have had to strain the provisions of Section 1325 by decision or informal rule to reach the right result vis-a-vis the level of payments of the debtor for the particular case.

Many courts have construed the, good-faith language, Section 1325(a)(3) to this end, which was not intended by Congress in the enactment of that requirement. The good-faith requirement of that Section is meant to bar the confirmation of a Chapter 13 plan where the debtor either does not intend to effectuate the plan as proposed or where the proposed plan is for a purpose not permitted under Title 11. For instance, a debtor is not entitled to the confirmation of any plan the principal purpose of which is to render the debtor incapable of meeting legal obligations for the support and maintenance of a former spouse or dependent child.

The "bona fide effort" test is intended to require that the plan proposed by the debtor is a real effort and not a half-hearted effort by the debtor to repay his creditors. It means that the debtor should forego luxuries during the term of the plan. For most debtors some sacrifice and adjustment to the debtor's standard of living will be required. There should be no such expenses as the purchase of new cars or for that matter continuing to make payments on a nearly new car at the expense of unsecured creditors under the plan. The court should look at all the circumstances of debtor and, in some cases, require the debtor to pursue a more modest lifestyle.

This is not to say that any court should require undue financial hardship of the debtor during the plan.

No arbitrary repayment levels should be required by judges, neither should trustees be permitted to require a certain level of payments in return for not opposing confirmation.

There must be room in Chapter 13 for the debtor on welfare or old age assistance who can only pay a nominal amount. There should not be room for the single payment plan or the new college or the professional school graduate seeking a new start at the expense of his creditors and future generations of students. In some cases courts should require the debtor to repay his unsecured creditors in full, but that should not necessarily become the norm as it was in many jurisdictions under the Bankruptcy Act.

In short, Chapter 13 must be a legitimate alternative for the debtor in financial difficulty who honestly wants to pay his debts. If this is the case, then the debtor's own creditors will encourage the debtor to seek the alternative and the maximum repayment to all creditors will be achieved. Finally all those in the credit community must treat the Chapter 13 debtor as a better credit risk than the debtor who has taken straight bankruptcy. Thus, the historical spirit and intent of Chapter 13 will be preserved and the intent of Congress achieved.

Section 130 of the Senate amendment adds to the list of debts non-dischargeable in a chapter 13 proceeding to assure that the chapter 13 alternative is not used by debtors for purposes of discharging obligations inconsistent with the intent of Congress in providing the chapter 13 alternative.

Section 134 of the Senate amendment adopts the position taken in the House amendment with the addition that in pilot United States trustee districts the same standards and procedures for the removal of a trustee will operate as they do in the non-pilot districts.

Section 138. This amendment is not to be interpreted as reflecting that United States trustees may not call meetings in other than chapter 13 proceedings.

Section 142 of the Senate amendment adopts the position taken in the House amendment with the addition of the qualification that interim reports, although rarely needed in liquidation proceedings, might be justified when, for example, the trustee must operate the business.

Section 144 of the Senate amendment adopts the position taken in the House amendment with the qualification upon the right of the United States trustee to request the court that a debtor in possession be removed only if there is no creditors' committee which would, under normal circumstances, be the party in interest to make such a request.

Section 145. The regulations to be promulgated under Section 151302(b)(2) might contemplate the use of old Chapter XIII money for work done in new Chapter 13 cases.

Section 202 of the Senate amendment adopts the position taken in the House amendment with a slight modification of the affirmative action standard.

Section 203 of the Senate amendment eliminates the age limitation for chief judge of the bankruptcy court. This limitation is discriminatory and without justification and could deny to the courts and the public the benefit of experience and sophistication in the administrative responsibilities which devolve upon a chief judge.

Section 213 of the Senate amendment adopts the position taken in the House amendment with the exception of the House provision granting the United States trustee the power to remove trustees without other limitation. This will not be accomplished by the earlier amendment making Section 324 applicable in pilot United States trustee districts.

Section 215 of the Senate amendment adopts the position taken in the House amendment with the addition of removing from the authority of the Administrative Office of United States Courts the power to remove a trustee from a case. This is now consistent with the treatment of trustee removal in pilot districts.

Section 217 of the Senate amendment modifies the position taken in the House amendment. The exemption from Section 3709 of the Revised Statutes, which enables the Director to negotiate contracts in lieu of formal advertising and will enable him to take into consideration in the evaluation of offers the previous experience of prospective reporters as bankruptcy court reporters.

Section 220 of the Senate amendment adopts the position taken in the House amendment with the addition of a clarifica-

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